



DEPARTMENT OF THE NAVY

OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

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Ser DNS-36MW/15U105102

April 15, 2015

Sent via email to: jmmcarthy@judicialwatch.org

Mr. Justin McCarthy
Judicial Watch
425 Third St. SW
Washington, D.C. 20024

Dear Mr. McCarthy:

SUBJECT: YOUR FREEDOM OF INFORMATION ACT REQUEST;
DoD FOIA CASE NUMBER 15-F-0166
FOIA TRACKING NUMBER DON-NAVY-2015-001667

This is in reference to your Freedom of Information Act (FOIA) request dated October 15, 2014. As you were previously apprised by the Department of Defense, Office of Freedom of Information (DoDOFOI) (case number 15-F-0166) your clarified FOIA request dated November 21, 2014 was referred to this Department for action. That referral was received by this Department on December 9, 2014 and assigned FOIA Tracking Number DON-NAVY-2015-001667.

You state that Judicial Watch is entitled to a waiver of search fees because it is a member of the news media and stated that "Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skill to turn this information into distinct works, and publishes and disseminates these works to the public."

The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. A requester in this category must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's general right to know about government activity. The Judicial Watch website indicates only that "Judicial Watch fulfills its educational mission through litigation, investigations, and public outreach." This statement implies that Judicial Watch's main professional activity is neither publishing nor information dissemination. Accordingly, we have determined that Judicial Watch does not qualify as a representative of the news media.

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As a result, we have determined that you should be placed in the "other" category for fee purposes. The "other" fee category affords you two hours of search time, all review time, and 100 pages of duplication free of charge. Subsequent processing will be assessed at the fee rates established by OMB: clerical search time--\$20.00 per hour; professional search time--\$44.00 per hour; executive search time--\$75.00 per hour; and document reproduction at \$0.15 per page.

In an effort to assist you, we contacted the Office of the Assistant Secretary of the Navy for Energy, Installations and Environment (OASN/EI&E); Deputy Chief of Naval Operations for Information Dominance (N2/N6); and Chief of Staff Energy and Environmental Readiness Division (N45) to conduct a search of their files for potentially responsive documents. The Deputy Chief of Naval Operations for Information Dominance (N2/N6) located three (3) documents, totaling twenty-three (23) pages, responsive to your request. Upon review of the documents, we have determined that the documents are releasable to you in their entirety and a copy is enclosed.

Furthermore, the Deputy Chief of Naval Operations for Information Dominance (N2/N6) identified twelve documents that originated with the Office of the Assistant Secretary of the Navy for Energy, Installations and Environment (OASN/EI&E). After consulting with OASN EI&E, we have determined that these documents contain internal advice, recommendations, and comments which would not be available by law to a party other than an agency in litigation with the agency. Accordingly, we must partially deny your request and withhold this information pursuant to the FOIA provision 5 U.S.C. § 552(b)(5).

The twelve documents contain personal comments and suggestions submitted by survey respondents. The information, if disclosed, will allow individuals familiar with the subject to identify individual respondents, which could have a serious chilling effect on the entire survey process within the program. This would result in future respondents to similar surveys, knowing that such comments become public would not provide such open and frank comments. Additionally, it would truly prevent the leaders in making future organizational-related decisions because they would not be receiving accurate information needed to make final determinations.

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Because your request is partially denied, you are advised of your right to appeal the denial of your request by writing to:

Office of the Judge Advocate General
1322 Patterson Ave, SE, Ste 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be postmarked within sixty calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

In this instance, the fees associated with the processing of this request were below the minimum threshold and have not been assessed. Please be advised, however, that fees, fee categories, and fee waivers are determined on a case-by-case basis, and a previous determination has no influence on future determinations.

Questions regarding the action this office has taken during the processing of your request may be directed to our FOIA service center at (202) 685-0412.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robin Patterson", is written over a horizontal line.

Robin Patterson

Head, DON FOIA/PA Program Office